



California Fair Political Practices Commission

August 8, 1988

Richard K. Boomer
1661 Petaluma Court
Hollister, CA 95023

Re: Your Request For Advice
Our File No. I-88-291

Dear Mr. Boomer:

You have requested advice about application of the Political Reform Act (the "Act")^{1/} to your position with the San Benito County Sheriff's Department should you be elected to the City Council of the City of Hollister.

The question you have asked does not describe a specific pending governmental decision. Therefore, we treat your request as one for informal assistance pursuant to Regulation 18329(c)(3)(D) and (F) (copy enclosed).^{2/}

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

QUESTION

You are a deputy sheriff for San Benito County. You intend to run for City Council of the City of Hollister. Are you prohibited from simultaneously serving as a city councilmember and a deputy sheriff? What restrictions would apply to your actions as a councilmember and as a deputy sheriff if you hold these two positions?

CONCLUSION

The Act does not prohibit you from simultaneously serving as a city councilmember and a deputy sheriff. Concurrently holding the positions of city councilmember and deputy sheriff would not create a conflict of interest under the Act. The Act prohibits public officials from participating in governmental decisions that would have a foreseeable and material financial effect on private economic interests. Salary from a governmental entity, however, does not create a private economic interest for purposes of the Act.

There may be other state laws or local government policy adopted pursuant to Government Code Section 1126, which restrict your holding both positions at the same time. We advise you to seek advice from county counsel or the city attorney about other laws and local government policy.

FACTS

You intend to run for election to the City Council of the City of Hollister. You are a sheriff's lieutenant for San Benito County. In this capacity, you serve as administrator of the county jail and report directly to the county sheriff. The sheriff reports to the county board of supervisors.

ANALYSIS

One purpose of the Act is to prevent conflicts of interest in governmental decisionmaking. (Section 81002(c).) To this end, Section 87100 prohibits a public official from making, participating in making or in any way attempting to use his or her official position to influence a governmental decision in which the official has a financial interest. The Act does not prohibit you from serving simultaneously as a member of the city council and as a deputy sheriff. Instead, the Act requires you to disqualify yourself from participating in governmental decisions in which you have a financial interest.

An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, different from the effect on the general public, on the official or a member of the official's immediate family, or on the following economic interests:

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

Section 87103(c) and (d).

Thus, you would be disqualified from participating in decisions as a councilmember or deputy sheriff if those decisions would foreseeably and materially affect a source of \$250 or more in income to you, or a business entity by which you are employed or in which you hold a position of management.

For purposes of the Act, salary or per diem from a government agency is not considered income. (Section 82030(b)(2).) Any income you receive from the county or from the city would not make the county or the city a potentially disqualifying source of income to you under Section 87103(c). Therefore, salary from either government agency could not be grounds for disqualification from a governmental decision. (In re Moore (1977) 3 FPPC Ops. 33; Darcy Advice Letter, No. I-87-296, copies enclosed.)

Furthermore, under the Act a government agency is not a business entity. (Section 82005.) Membership on the city council would not make you a director or officer of a business entity subject to Section 87103(d). Similarly, your employment with the county does not make you an employee of a business entity. Accordingly, being a city councilmember or county employee also could not be grounds for disqualification from decisionmaking.

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Nevertheless, there may be local government policy, adopted pursuant to Government Code Section 1126, or other state or local laws that prohibit your holding the position of county sheriff and city councilmember at the same time. We do not administer those laws. Therefore, we refer you to county counsel or the city attorney for advice about those laws. We have enclosed a copy of Attorney General's Opinion No. 59-140 to which you referred when we spoke on July 29, 1988 and a list of attorney general's opinions about incompatible public offices.

Also, Section 1090 prohibits a public official from having a financial interest in a contract. We do not administer this section. Again, we refer you to county counsel or the city attorney for advice about Section 1090.

I hope this letter satisfactorily answers your advice request. Please call me at (916) 322-5901 if you have any questions about this letter.

Sincerely,

Diane M. Griffiths
General Counsel


By: Margarita Altamirano
Counsel, Legal Division

DMG:MA:aa

Enclosures

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July 19, 1988

Richard K. Boomer
1661 Petaluma Court
Hollister, CA 95023
(408) 637-2765 (home)
(408) 637-5323 (work)

Diane Griffiths
General Counsel
Fair Political Practice Board
P. O. Box 807
Sacramento, CA 95804-0807

Dear Ms. Griffiths:

Earlier today I had the opportunity to speak with Marguerette, the Day Attorney in your organization, regarding a problem I may be facing in the upcoming November election.

I intend on running for the Hollister City Council. The Hollister City Attorney, John H. O'Brien, has stated that, because I am employed with the San Benito County Sheriff's Department, I may have a conflict of interest.

He feels, I will not be able to vote on City Police issues or issues that arise between the City and County Governments. He also stated that if elected, I may have to choose between my job and the council seat.

I was told by the Day Attorney that she felt there was no conflict but suggested I request your opinion in writing. (Enclosed you will find a copy of my job description.)

I have until August 12th to file my papers if I intend on running. I know this is short notice and I apologize but I do not wish to put my family or supporters, through the rigors of an election, if the City Attorney is going to say I cannot serve.

Please advise me at the soonest possible date if there is in fact a conflict of any sort. I wish to thank you in advance for your efforts on my behalf.

Respectfully,

A handwritten signature in cursive script, appearing to read "Richard K. Boomer".

RICHARD K. BOOMER

Enclosure

SHERIFF'S LIEUTENANT
(Corrections)

Definition:

Will be the Jail Administrator, answering only to the Sheriff. He/She will be responsible for the operation of the San Benito County Jail Facility on a day-to-day basis. In the absence of the patrol Lieutenant, will be responsible for all Sergeants and Deputies and their day-to-day function. In the absence of the Sheriff, may be assigned to be responsible for the operation of the whole Sheriff's Department.

Example of Duties:

He/She shall be responsible for coordinating the functions of the San Benito County Jail Facility in general. Shall be responsible for planning and development on all phases to insure maximum efficiency of the jail's activities. Establish the Jail Division's goals and objectives and implement programs on a continuing basis to achieve these goals. Be responsible for inter-agency coordination and develop good relations within local government, Federal and State agencies. Be responsible for the scheduling, training and personnel records of all employees assigned to the Jail Division. Be responsible for the budget and all internal investigations for the Jail Division. Will be responsible for the Civil Division, warrants and maintenance of the training facility. He/She shall enforce all the rules and regulations pertaining to the Sheriff's Department. Will maintain complete inventory of equipment for the Jail Facility.

Desireable Qualifications:

Possession of a valid California operator's license. Possession of an "Advanced Certificate" issued by the State Commission of Peace Officers Standards and Training.

Education/Experience:

Equivalent to completion of the twelfth grade. Completed Supervisory School, and will complete Middle Management course with 12 months of promotion to Lt. Must have 10 years of Law Enforcement experience
Must be a Sgt. at the time of promotion to Lt.

Knowledge and Ability:

General knowledge of the principals, techniques and methods of middle management. General knowledge of criminal law including the laws of arrest, search and seizure, rules of evidence, and laws governing jail procedure. General knowledge

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Knowledge and Ability: (Cont'd)

of the principals, methods, and techniques of Law Enforcement work. General knowledge of all the functions performed by the San Benito County Sheriff's Department. The ability to promote and develop innovative programs for the purpose of increased efficiency of the objectives and goals of the Department. Ability to interpret and explain complex problems to subordinates. Ability to establish and maintain effective working relationships with fellow employees, government officials, and the general public. Ability to make decisions involving the Sheriff's Department on an on-going everyday operation of the Department.